IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.726 OF 1992
WITH
CIVIL APPLICATION NO. 3226 OF 1992

CIVIL WRIT PETITION NO.726 OF 1992

1. Bhaskar Ramchandra Shejwalkar,
   At Purohit House, Near Mamledar
   House, H.No. 549, at and P.O.
   Dapoli, Dist. Ratnagiri.

2. Uday Mahadeo Chhatre,
   Pratik Safar, H.No. 953,
   Shivaji Nagar, Dapoli,
   Dist. Ratnagiri. ... Petitioners.

V/s

1. The State of Maharashtra
2. Regional Transport Authority,
   Thane Region, Thane.
3. State Transport Authority for
   Maharashtra State. ... Respondents.

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   Shivaji Nagar, Dapoli,
   Dist. Ratnagiri. ... Respondents.

Mr. C.M. Lokesh for Mr. G.S. Hegde and G.F. Shirke for the petitioners.

Mr. A.P. Vanarase, AGP for the respondents.

CORAM : D.G.DESHPANDE, J.
DATE : 13TH SEPTEMBER, 2006.

P.C.

. Heard Mr. Hegde for the petitioners and Mr. Vanarase, AGP for the State.

2. Petitioners have challenged in this petition condition No.5 of Exh."A" which is a permit issued to the petitioners by the RTO Thane under the powers vested under Section 51 of the Motor Vehicle Act, 1939 r/w Rule 129(2) of Bombay Motor Vehicle Rules, 1959. The permit is granted " particular contract marriage permit for two (2) Tourist Taxi cabs" to the petitioners with certain conditions. One of the conditions i.e. condition No.3 is that the vehicles shall at not no time be older than 5 years of age from the date of its original registration. It is this condition which is challenged in the present petition.

3. Counsel for the Petitioners drew my attention to

Rule 82 (2) of New Act in this regard under the Central Government which is reproduced as under:-

> "82(2): No tourist permit shall be granted in respect of a motor vehicle which is more than 2 years old.
>
> (b) A tourist permit shall be deemed to be valid from the date on which the vehicle covered by the permit completes seven years where the vehicle is a motor cab and five years where the vehicle is other than a motor cab, unless the vehicle is replaced.
>
> (c) Where a vehicle covered by a tourist permit is proposed to be replied by another, the later model shall not be more than two years old as on the date on such replacement.
>
> Explanation For the purpose of this sub-rule, the period of 2 years, 5 years or 7 years shall be computed from the date of initial registration of the motor vehicle."

As per Rule No. 82(2)(b) the age limit for the vehicle for which the permit can be issued is 7 years. However, while permit Exh."A" was issued to the petitioners, the age limit fixed was 5 years by the RTO. This according to the petitioners is wrong and contrary to law.

4. The learned AGP tried to contend in this regard on the basis of the affidavit filed at the time of passing ad interim order that "the petitioners have not

made any averment as to on what date the vehicle completes 5 years." Therefore, according to AGP the affidavit is vague itself and no relief can be granted.

5. This submission does not appears to be sound because under Rule 82(2) as quoted above itself it is clarified in the explanation that the period of 2 years, 5 years, or 7 years is to be computed from the date of initial registration of the motor vehicle. Therefore, when the petitioners state and relies upon the rule 82(2) is that 7 years period would be computed from the date of initial registration of the motor vehicle.

6. Nothing more was pointed out by the learned AGP to show that as to the provisions under which the period of 7 years is prescribed 82(2) could be reduced by RTO Thane for 5 years as per condition No.3. Therefore, it does not appears to be powers vested in the State Government to reduce the period of 7 years to 5 years and that the condition is improper.

7. In this regard of the situation, the petition is required to be allowed. However, it is a fact that this petition is filed in 1992 and on 2nd March, 1992 interim

relief in terms of prayer clause (b) is granted to the petitioners. However, while granting interim stay condition was imposed that the vehicle in question should not complete 7 years from the date of initial registration. It was made clear that in the event of the vehicle completing the period of 7 years from the date of initial registration of the vehicles, interim stay shall automatically stand vacated. Counsel for the petitioners state that as on today he has no instructions whether there was compliance of the order by the petitioners but in any case, even the petition has to be allowed, the petitioners cannot be permitted to ply the vehicles for which the permit was granted. Obviously, period of 7 years must have been expired now. With this clarification the following order.

(A) The petition is allowed. The condition No.3 in the permit Exh. "A" is struck down. The restrictions imposed upon the petitioners shall be read as :-

"The cabs should not be at any time more than 7 years old. The RTO still verify from the documents and vehicles used by the petitioners whether they fulfils all other conditions, including the above regarding the

age of the vehicles and will take appropriate suitable action required by law.

(B) Rule made absolute in terms of above.

(C) Civil Application does not survive and disposed of.

(D.G.DESHPANDE, J.)